2013 IL App (2d) 120631-U
No. 2-12-0631
Order filed December 16, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LEON SMITH, JR., Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 09-CF-2489 Honorable John R. Truitt, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to an aggregate 12 years' imprisonment for three sex offenses: despite defendant's poor health and minimal criminal history, which the trial court considered, the sentence was justified by the seriousness of the offenses and defendant's threatening a witness.

¶ 2 Following a bench trial, defendant, Leon Smith, Jr., was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a) (West 2008)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)). The trial court sentenced him to seven years' imprisonment for predatory criminal sexual assault and five years for each count of aggravated

criminal sexual abuse. Defendant appeals, contending that, given his multiple medical conditions, including congestive heart failure, and his minimal criminal record, the 12-year sentence was an abuse of discretion. We affirm.

¶ 3 The trial evidence showed that defendant assaulted D.L., the daughter of defendant's girlfriend, Felicia. Defendant was left alone with D.L. while Felicia went to the store. Felicia returned to find D.L.'s pants pulled down below her knees. Defendant then grabbed Felicia and said, "It's not what you think." D.L. testified that, on that occasion, defendant touched her over her clothing. He then pulled down her pants and tried to force his penis inside her. D.L. testified about an earlier incident in which defendant felt her "butt" and breasts over her clothing, then put his finger inside her vagina.

¶ 4 At sentencing, Felicia testified that, following an earlier court date, she met defendant in the courthouse parking lot. Defendant said something to the effect of, "You know I can get to you." Defendant's mother testified that defendant had been in the military and, since his incarceration , had been "real sick." The presentence report listed defendant's medical conditions, including congestive heart failure and diabetes. Defendant's criminal record consists of minor convictions in 1969 and 1979, for which he was fined, and some traffic offenses.

¶ 5 Defense counsel argued that, given defendant's medical conditions, even the minimum sentence would likely be a life sentence. The trial court sentenced defendant to seven years' imprisonment for predatory criminal sexual assault and to two concurrent five-year prison terms for aggravated criminal sexual abuse, to run consecutively to the seven-year sentence. Defendant timely appeals.

¶ 6 Defendant contends that, given his poor health and minimal criminal history, the 12-year aggregate sentence was an abuse of discretion. He maintains that he should have received the

minimum sentence for predatory criminal sexual assault—6 years in prison—followed by a consecutive term of probation, which was permissible. See *People v. Wendt*, 163 Ill. 2d 346, 354 (1994). The State responds that the trial court expressly considered these factors in fashioning the sentence and that this court should not simply reweigh the aggravating and mitigating factors to reach a different result.

¶ 7 If a sentence falls within the statutory limits, it will not be overturned on appeal absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977); *People v. Stroup*, 397 Ill. App. 3d 271, 274 (2010). An abuse of discretion occurs only where a sentence is at great variance with the spirit and purpose of the law or where it is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). A reviewing court must not substitute its judgment for that of the trial court merely because it might have weighed the aggravating and mitigating factors differently. *Id.*

¶ 8 Here, the trial court expressly considered defendant's poor health and relative lack of criminal history in imposing the sentence. Thus, the sentence does account for the mitigating factors. The existence of mitigating factors did not obligate the court to impose the minimum sentence. *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994).

¶ 9 Having considered the mitigating factors, the trial court also properly considered the seriousness of the offenses. On at least two occasions, defendant assaulted the victim, who was left in his care. See *id.* at 739 (sentencing court may properly consider that defendant held a position of trust or supervision toward victim). Moreover, the court was troubled by the fact that defendant threatened the victim's mother, who was also a State witness. Despite these facts, defendant's sentence for predatory criminal sexual assault was only one year longer than the minimum and defendant's sexual-abuse sentences were only two years longer than the minimum. We note that

courts have affirmed lengthy sentences for defendants with serious health conditions. For example, in *People v. Childress*, 321 Ill. App. 3d 13, 30-31 (2001), the court upheld a 29-year sentence for the defendant, who was permanently confined to a wheelchair.

¶ 10 *People v. Smith*, 258 Ill. App. 3d 633 (1994), on which defendant relies, is distinguishable. There, the defendant was diagnosed with cancer *after* the sentence was imposed. The appellate court, while finding that the 12-year sentence was not an abuse of discretion, nevertheless remanded the matter to the trial court to decide what effect, if any, the defendant's cancer should have on the length of her sentence. *Id.* at 645. Here, of course, the trial court already considered defendant's medical conditions when imposing the sentence originally.

¶ 11 The judgment of the circuit court of Winnebago County is affirmed.

¶ 12 Affirmed.